IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 874 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAJIRBHAI MUSTAFABHAI QURESHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 874 of 2001

MR PK PANCHOLI for Petitioner No. 1

MR SS PATELfor Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/01/2002

ORAL JUDGEMENT

1. The petitioner came to be externed from the territorial limits of the districts of Bhavnagar, Rajkot, Amreli, Junagadh, Surendranagar and Ahmedabad by virtue of an order passed by Sub-Divisional Magistrate, Bhavnagar, on July 31, 2001, in exercise of powers under

Section 56(A) of the Bombay Police Act.

2. The authority, before passing the order, issued a notice dated dated February 22, 2001, as required under Section 59 of the Bombay Police Act. The notice was replied to by the proposed externee - the petitioner. However, considering the contentions, the externing authority passed the impugned order. The said order was challenged before the Appellate Authority by the externee under Section 60 of the Bombay Police Act and the Appellate Authority, after considering the points raised before him, dismissed the appeal on October 24, 2001. Aggrieved by the said orders, the petitioner has approached this Court with this petition under Article 226 of the Constitution.

2.1 The order is challenged on various grounds stated in the petition.

3. Learned advocate for the petitioner, Mr. Pancholi, has restricted his arguments to the fact that the petitioner stays at Bhavnagar. As per the show cause notice as well as the order, the area of operations is restricted to only Bhavnagar. There is nothing to indicate that the petitioner would be able to operate from other areas. Still, however, the petitioner has been externed from the contiguous districts of Rajkot, Amreli, Junagadh, Surendranagar and Ahmedabad. The authority has not even recorded its satisfaction for the need for externing the petitioner from contiguous districts and in absence of material and satisfaction recorded by the authority regarding possibility of the externee operating from those districts and in absence of any material available before the authority, such order could not have been passed. He, therefore, submitted that the petition may be allowed and the order may be quashed. In support of his submission, Mr. Pancholi relied on the decision in the case of Saiyed Husain Saiyed Umar v. State of Gujarat and Another, as reported in 1985(2) GLR 1045.

4. The petition is opposed to by learned Additional Public Prosecutor Mr. Patel. He submitted that the authority is invested with powers to extern such miscreants from adjoining districts by the provision itself and, therefore, the order cannot be challenged. The power vested in such authority has been recognized by a Division Bench of this Court in the case of Babakhan Pathan alias Narsi Gulmohmad v. State of Gujarat, 1987(1) GLH 176. He, therefore, urged that the petition may be dismissed.

5. Having regard to the contentions raised before this Court, it requires to be noted that, despite a close scrutiny, neither Mr. Patel, learned A.P.P. nor this Court could find any satisfaction recorded by the authority to indicate that the petitioner is likely to operate from the adjoining districts, if he is externed from the district of his operation. There is no material for recording such satisfaction. No grounds are indicated either in the notice or in the order for restraining the petitioner from the contiguous districts. There can be no dispute about the fact that the authority is empowered to exercise such powers of externment even in respect of contiguous districts, but the powers are required to be used, in a given case, if there are grounds for passing such order as this order would curtail liberty of a citizen. If there is total absence of ground and if even satisfaction is not recorded, the order could not have been passed and cannot be sustained. Under the circumstances, the order of externment impugned herein deserves to be quashed and set aside by allowing this petition.

6. In the result, order of externment dated the 31st July, 2001 passed against the petitioner and the order passed by the Appellate Authority dated the 24th October, 2001 are hereby quashed and set aside. Rule is made absolute.

7. Direct service is permitted.

[A.L. DAVE, J.]

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